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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 531

FRANK G. BUFFUM,

Petitioner,

vs.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, A NATIONAL BANKING ASSOCIATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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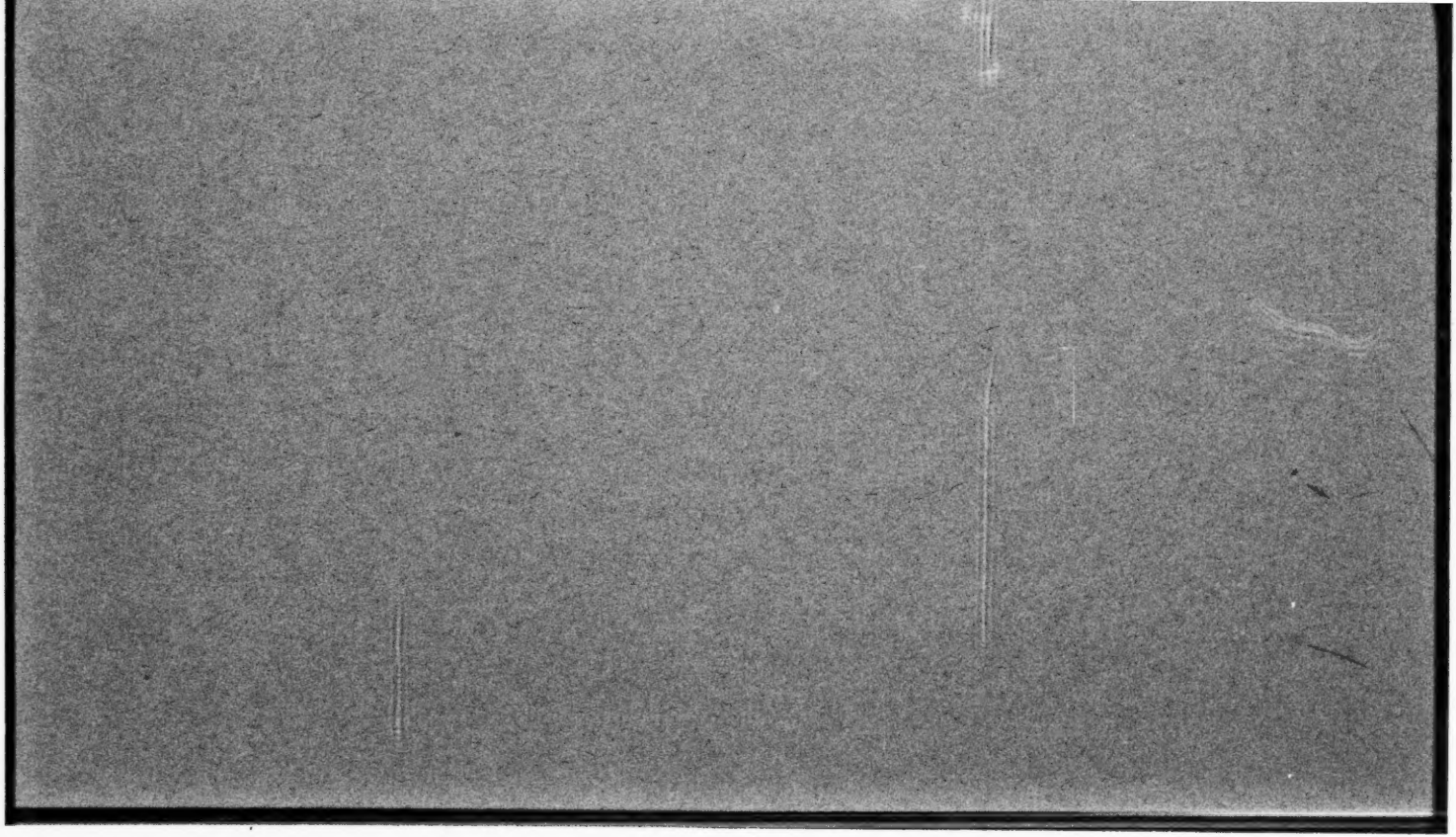

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OPINION BELOW.

The district court did not write an opinion. Its conclusions and order appear in the record at page 30. The opinion of the court of appeals (R. 36-40) is reported in 192 F. 2d 58.

JURISDICTION.

The judgment of the court of appeals sought to be reviewed was entered on October 24, 1951 (R. 41). The petition for a writ of certiorari was filed on January 12, 1952. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

QUESTION PRESENTED.

Whether under 12 U. S. C. § 94, the proper venue for this action against the respondent national bank is in the Southern District of New York, where the respondent is "established".

STATUTES INVOLVED.

12 U. S. C. § 94 provides as follows:

> Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

28 U. S. C. § 1391 provides:

> 1391. Venue generally
>
> (a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.
>
> (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.
>
> (c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.
>
> (d) An alien may be sued in any district.

STATEMENT.

This action was brought against The Chase National Bank, a national banking association with its principal office and place of business in the City of New York, apparently to recover damages for breach of contract occasioned by the respondent's asserted failure to deliver 175,000 tons of cold rolled sheet steel (R. 3-15, 16-18, 28-29). The district court dismissed the action on the ground that under 12 U. S. C. § 94, the proper venue was in the Southern District of New York, where the respondent national bank is established (R. 30).

Petitioner's complaint, filed on September 15, 1950, sought damages from the respondent The Chase National Bank of the City of New York, and from J. S. Corre, and John R. Davies, all citizens of the State of New York (R. 3-15).

On October 6, 1950, the respondent bank entered its appearance, and four days thereafter filed a motion to dismiss the action on the ground, among others, that the proper venue under 12 U. S. C. § 94 is in the Southern District of New York (see R. 2).

On December 13, 1950, the petitioner filed an amended complaint against The Chase National Bank of the City of New York only, having dropped defendants Corre and Davies as parties (R. 16-23).

The principal allegations of the amended complaint may be summarized as follows:

> The petitioner is an Illinois citizen, residing in Chicago, and the respondent bank is a national banking association organized under the laws of the United States, with its principal office and place of business in the State of New York. The district court has jurisdiction because the matter in controversy ex-

ceeds $3,000 and is between citizens of different states. (R. 17.)

The Chase National Bank was authorized to do business in Illinois as a foreign corporation as described in the certificates of authority issued by the Illinois Secretary of State and the Illinois Auditor of Public Accounts attached to the Amended Complaint (R. 17). (Said certificates show that in January 1931, The Chase National Bank of the City of New York was authorized only "to accept and execute trusts and carry on a general trust business" and "to receive deposits of trust funds in Illinois" (R. 19, 21).)

(The amended complaint subsequently refers to Exhibit A thereto showing that on August 25, 1942, the respondent changed its registered agent in Illinois from R. Allen Stephens to C. T. Corporation System "by resolution duly adopted by the board of directors" of the respondent bank (R. 17, 20).)

In reliance upon respondent bank's May 18, 1950, representation that it was holding letters of allocation for 175,000 tons of cold rolled sheet steel (see *infra,* p. 6), the petitioner obtained an order for the purchase of said steel, but the respondent refused to consummate the sale. The petitioner claimed damages in the sum of $3,018,750 in lost profits. (R. 18.)

On March 16, 1951, petitioner amended his amended complaint and alleged that the respondent maintains a Chicago office, is a Chicago telephone subscriber, and maintains a Chicago teletype station. In the amendment, it is also stated that the petitioner has for many years been a merchant engaged in the business of buying and selling steel in Chicago, and that a letter of allocation in the steel industry is an obligation on the part of the issuer steel mill to deliver the quantity of steel described therein to the holder of the letter. The amendment next states that the petitioner sold 175,000 tons of steel in Chicago on May 25, 1950, in reliance upon the representation of the re-

spondent made in its May 18, 1950, message (see *infra*, p. 6) which the petitioner had received in Chicago (R. 28-29).

The original complaint contains certain allegations which describe the alleged transactions in more detail and which may be summarized as follows:

> Prior to May 17, 1950, the defendant Corre represented to the petitioner that an allocation of 3,600,000 tons of steel per annum had been made by three of the largest steel mills "for the purpose of creating a Republican campaign fund through the sale of this steel on an overage basis of $7 per ton," and that orders would be accepted only in minimum amounts of 175,000 tons for cold rolled sheet steel. Defendant Corre advised the petitioner that The Chase National Bank of the City of New York was in possession of the allocations for the first 175,000 tons. The petitioner agreed to investigate defendant Corre's representations "By reason of having knowledge that one Aldrich, Chairman of the Board of said bank, was engaged in financing the Republican Party of the State of New York." (R. 9-10.)
>
> Defendant Corre thereupon supplied the petitioner with the code name "Mercury" and instructed him to contact George S. Johnson, Assistant Manager of Chase's Grand Central Branch in New York City. Petitioner sent an inquiry to Johnson concerning the "Mercury" matter and received a message from Johnson that a Chase depositor "exhibited letter indicating allocations cold rolled sheet steel aggregating 175,000 tons. * * * Also advise Mr. Buffum this information is furnished without responsibility this bank." (R. 10.)
>
> Petitioner rejected the representations in Johnson's message because the letter of allocations had merely been exhibited. The petitioner then advised the respondent bank that letters of allocation "must be deposited with the defendant [Chase] in order to be acceptable, and that the defendant [Chase] must so

advise the plaintiff * * * through a Chicago bank." (R. 11.)

On May 18, 1950, the LaSalle National Bank of Chicago received a telegram from Johnson stating that a depositor requested the respondent bank to transmit the following message to the LaSalle National Bank (R. 11):

> "supplementing our wire May 17 we hold two letters qualifying allocations of cold rolled sheet steel aggregating 175,000 tons 'allocations are from among first seven in size and importance. Confirmations will be delivered to purchaser within five days receipt of order. These allocations are valid and exclusive. Acceptance and rolling schedule on order number 619 have gone forward' the foregoing is furnished at the specific request of our depositor without responsibility to this bank.
>
> Grand Central Branch—Chase Natl Bank 4:15
> George Johnson, Assistant Manager."

It is alleged that the petitioner deposited Chase's two messages and procured an order from the Federal Engineering Company for 175,000 tons of steel, but that no steel has been supplied by the respondent, or by anyone on its behalf (R. 11-12). As in the amended complaint, the damages claimed for the alleged breach of contract total $3,018,750 (R. 13).

On January 8, 1951, the respondent filed a motion to dismiss the action on the ground, *inter alia,* that under 12 U. S. C. § 94 an action against the respondent national banking association may be had in a District Court of the United States only in the Southern District of New York, the only district in which the respondent is "established" (R. 23-24). Attached to the motion to dismiss were certain affidavits showing that the respondent national banking association has its principal office and place of business in New York City, that it transacts all its

United States business through said office, that C. T. Corporation System was designated as its Illinois registered agent by resolution of respondent's Board of Directors only "in connection with its acceptance and execution of trusts and receipt of deposits of trust funds in Illinois," and that said limitation of authority of its registered agent in Illinois had been approved in advance by the Office of the Illinois Secretary of State (R. 24-26). Also attached to the motion to dismiss were Chase's annual reports to the Illinois Secretary of State for 1942 and thereafter, listing the C. T. Corporation System as its Illinois registered agent only "in connection with its acceptance and execution of trusts and receipt of deposits of trust funds in Illinois" (R. 27-28).

After considering the pleadings and briefs discussing the venue question, on June 26, 1951, the district court stated as follows (R. 30):

> "It is my conclusion that under 12 U. S. C. 94, the venue of this action is only in the Southern District of New York. The defendant has not consented to be sued in Illinois except 'in connection with its acceptance and execution of trusts and receipt of deposits of trust funds in Illinois,' and such matters are not involved in this action."

On the same date, the district court entered an order sustaining the respondent's motion to dismiss for want of proper venue (R. 30).

On appeal, the judgment of the district court was affirmed by the court below, which held that under 12 U. S. C. § 94 the proper venue is only in the Southern District of New York, where the respondent is established; that respondent had consented to be sued in Illinois only in connection with its Illinois trust business; that this case does not involve Illinois trust business; and that 12 U. S. C. § 94 was not repealed by 28 U. S. C. § 1391 (R. 36-40).

ARGUMENT.

1. The Chase National Bank of the City of New York is a national banking association (R. 17). A special provision in the National Banking Act, 12 U. S. C. § 94 (*supra*, p. 2), governs the venue of suits against national banking associations and provides that the proper venue of a suit against a national bank in a federal court is the district in which the association is "established". A national bank is "established" within the meaning of 12 U. S. C. § 94 only where its principal office and place of business is, as specified in its organization certificate. *Leonardi* v. *Chase National Bank of City of New York*, 81 F. 2d 19, 21-22 (C. A. 2); *International Refugee Organization* v. *Bank of America*, 86 F. Supp. 884 (S. D. N. Y.). Because Chase's principal office and place of business is in New York City, New York (R. 17, 25), the proper venue for this action is in the Southern District of New York.

It was early decided and is now unquestioned that 12 U. S. C. § 94 is not permissive but mandatory. *Crocker, et al.* v. *Marine National Bank of New York*, 101 Mass. 240, 241-242 (1869); *Cadle* v. *Tracy, et al.*, 4 Fed. Cas. No. 2,279 at 967 (C. C. S. D. N. Y., 1873). Thus, a national bank, when sued in a federal court, may be sued only in the judicial district in which it is established. *Cope* v. *Anderson*, 331 U. S. 461, 467; *Schmitt* v. *Tobin*, 15 F. Supp. 35 (D. Nev.); *Burns* v. *Northwestern Nat. Bank of Minneapolis, Minn.*, 260 N. W. 253 (N. D., 1935); *Rabinowitz* v. *Kaiser-Frazer Corporation*, 96 N. Y. S. 2d 638 (Sup. Ct. Kings Co., 1950); *Crofoot* v. *Giannini*, 92 N. Y. S. 2d 191 (Sup. Ct. N. Y. Co., 1949).

2. Petitioner contends (Pet. 3-7, 18-21) that 28 U. S. C. § 1391 (*supra*, p. 2) has superseded 12 U. S. C. § 94. However, in enacting the 1948 Judicial Code, containing

Section 1391, Congress repealed "all laws incorporated in the revision and other superseded and obsolete provisions relating to the courts." The schedule of repealed laws attached to the Act containing the 1948 Judicial Code was "carefully checked and rechecked many times. This method of specific repeal will relieve the courts of the burdensome task of ferreting out implied repeals." (See H. Rep. No. 308, 80th Cong., 1st sess. p. 7.) Since 12 U. S. C. § 94 was not repealed when Congress enacted 28 U. S. C. § 1391, it remains in effect. *International Refugee Organization* v. *Bank of America,* 86 F. Supp. 884, 886 (S. D. N. Y.); *Rabinowitz* v. *Kaiser-Fraser Corporation,* 96 N. Y. S. 2d 638, 642 (Sup. Ct. Kings Co., 1950).

Although, as its title indicates, 28 U. S. C. § 1391 is addressed only to "venue generally", 12 U. S. C. § 94 is a specific provision governing the venue of suits against national banking associations, and under a well-established principle of statutory construction, the specific provision must prevail. *Baltimore National Bank* v. *Tax Commission,* 297 U. S. 209, 215.

The petitioner's contention that 28 U. S. C. § 1391(c) is applicable is allegedly substantiated by five district court decisions (Pet. 5, 20), but none of those decisions deals with national banking associations or 12 U. S. C. § 94. Each dealt with the definition of "residence" in 28 U. S. C. § 1391(c) as compared with the definition of "residence" or "inhabitant" in earlier statutes not applicable to national banking associations.[1]

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[1] Similarly, the quotation from Moore's Commentary on the U. S. Judicial Code (1949) on which petitioner relies (Pet. 4, 19-20) is from a Section entitled "Residence", which is concerned with the residence of an ordinary corporation and does not deal with national banking associations. Moreover, at the hearings before the subcommittee of the House Judiciary Committee con-

3. The respondent did not consent to be sued in Illinois on a cause of action not related to its Illinois trust business. The respondent's Board of Directors appointed C. T. Corporation System as its registered agent in Illinois only "in connection with its acceptance and execution of trusts and receipt of deposits of trust funds in Illinois" (R. 26). Furthermore, each of the Annual Reports of respondent filed with the Illinois Secretary of State since the C. T. Corporation System was appointed states that "the name of its [Chase's] registered agent at such address is C. T. Corporation System in connection with its acceptance and execution of trusts and receipt of deposits of trust funds in Illinois" (R. 27). Accordingly, the courts below held that the respondent did not consent to be sued in Illinois except in connection with its Illinois trust business (R. 30, 39), and the petitioner makes no claim that this case involves such business.

The limitation of C. T. Corporation System's authority was coextensive with the limited authority granted to the respondent by the Illinois Secretary of State and Auditor of Public Accounts (R. 19-21). The respondent limited the authority of its registered agent only after the Office of the Secretary of State advised it that this limitation was entirely proper (R. 24).

The consent cases on which petitioner relies (Pet. 22-24) did not involve 12 U. S. C. § 94, and in none of them had the respondent, as here, limited its consent to suit. For example, in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, in marked contrast to the limitation of C. T. Corporation System's authority in the instant case, William J. Brown was authorized by the Bethlehem

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cerning the new Judicial Code, Professor Moore explained that "venue provisions have not been altered by the revision" (U. S. Code Congressional Service, 80th Cong., 2nd sess., "Judiciary and Judicial Procedure" (1948), p. 1969).

Shipbuilding Corporation "as the person upon whom a summons may be served within the State of New York" (308 U. S. at p. 175).[2] Likewise, in *Oklahoma Packing Co.* v. *Gas Co.*, 309 U. S. 4, Wilson & Company's Oklahoma agent was authorized to accept service of process "in any action in the State of Oklahoma" (309 U. S. at p. 7), and in *Mississippi Publishing Corp.* v. *Murphree,* 326 U. S. 438, the defendant authorized its registered agent to accept "service of process * * * throughout the state" (326 U. S. at p. 442).

Petitioner argues (Pet. 24-26) that the respondent waived venue by its Illinois trust activities. Without discussing the various factual and logical errors contained in this section of petitioner's brief (Pet. 24-26), it should be noted that the five decisions upon which he relies (Pet. 25-26) involve the issue of whether or not there was sufficient jurisdiction of the defendant corporations, *i. e.*, were those corporations doing business within the jurisdiction in order to satisfy the requirements of due process. Here, the issue is not one of jurisdiction of the subject matter, but one as to the proper venue.

[2] In the *Neirbo* case, this Court recognized that venue "is subject to their [the defendant corporation's] disposition," and the Court rested its holding on its "finding an actual consent by Bethlehem to be sued in the courts of New York" (308 U. S. at pp. 168, 175).

CONCLUSION.

Under 12 U. S. C. § 94, the venue of this action is only in the Southern District of New York. The respondent did not consent to be sued in Illinois except in connection with Illinois trust matters, which are not involved in this action. Since the decision below is correct and there is no conflict of decisions among either the courts of appeals or the district courts, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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